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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,381	12/08/2003	Melvin E. Pierce	11288	9226

7590

06/22/2005

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EXAMINER

FRANCIS, FAYE

ART UNIT PAPER NUMBER

3725

DATE MAILED: 06/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/728,381

Applicant(s)

PIERCE, MELVIN E.

Examiner

Faye Francis

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/26/04</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce [5,947,396] in view of Harris [5,192,029].

Pierce discloses in Figs 1-10g, a material collider apparatus 10 for producing finely ground material comprising a base frame assembly 14 including a housing cavity 16, a housing assembly 12 secured to the base frame assembly so as to rest at least partially within the base frame housing cavity, the housing assembly being formed by a pair interconnected cylindrical chambers [cylindrical tanks 48 and 50] which are in fluid communication and in overlapping relation along the length thereof, a pair of rotor [60 and 61] assemblies each having a rotor [62 and 63], with one rotor being rotatably maintained coaxially in each cylindrical chamber, the rotors extending in parallel relation throughout the length the chambers, each rotor assembly further including a plurality of disc members 66 secured to each rotor. Additionally, Pierce discloses, the disc members extending generally transverse to the longitudinal axis of the chambers, and at least one thrust guide member 70 in the form of an elongated bar or rod rigidly secured to at least one disc member and means for rotating the rotor assemblies [col 5 lines 24-49] as recited in claim 1.

Pierce does not disclose at least one flow weir secured to the inner periphery of at least one the cylindrical chambers at least one flow weir secured to the inner periphery of at least one the cylindrical chambers 1, at least one flow weir secured to the inner periphery of each the cylindrical chambers as recited in claim 2, the multiple flow weirs are secured to inner peripheries of the cylindrical chambers as recited in claim 3, the flow weirs are approximately one to six inches in width as recited in claim 4, the flow weir is disposed adjacent the discharge side of the thrust guide as recited in claim 5, the flow weir is approximately 1/4 inch thick as recited in claim 6 and the flow weir is spaced approximately 1/4 to one inch from the thrust guide as recited in claim 7.

Harris is cited to show desirability, in the relevant art, to have at least one flow weir [separator shelf assemblies 68] secured to the inner periphery of a cylindrical chamber of a mill apparatus to adjustably control the amount of solid material processing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the device of Pierce with at least one flow weir secured to the inner periphery of each of the cylindrical chambers adjacent to the discharge side of the thrust guide as taught by Harris in order to adjustably control the amount of solid material processing and preventing internal wear of the housing from the grinding operation.

With respect to claims 4 and 6-7, it would have been obvious to further provide the weir in the modified device of Pierce in the claimed dimensions and spaced it according to claim 7 in order to achieve the desired grinding and separation of the material moving there through.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-7 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 30, 32 and 34 of U.S. Patent No. 5,947,396, hereinafter US'396 in view of Harris. Claims 1, 30, 32 and 34 of US'396 all of the elements claimed in claims 1-7 but for the at least one flow weir secured to the inner periphery of at least one the cylindrical chambers at least one flow weir secured to the inner periphery of at least one the cylindrical chambers 1, at least one flow weir secured to the inner periphery of each the cylindrical chambers as recited in claim 2, the multiple flow weirs are secured to inner peripheries of the cylindrical chambers as recited in claim 3, the flow weirs are approximately one to six inches in width as recited in claim 4, the flow weir is disposed adjacent the discharge side of the thrust guide as recited in claim 5, the flow weir is approximately 1/4 inch thick as recited in claim 6 and the flow weir is spaced approximately 1/4 to one inch from the thrust guide as recited in claim 7. It would have been obvious to modify the device claimed in the US'396 Patent

with at least one flow weir secured to the inner periphery of each of the cylindrical chambers adjacent to the discharge side of the thrust guide as taught by Harris in order to adjustably control the amount of solid material processing and preventing internal wear of the housing from the grinding operation.

With respect to claims 4 and 6-7, it would have been obvious to further provide the weir in the device claimed in the US'396 Patent in the claimed dimensions and spaced it according to claim 7 in order to achieve the desired grinding and separation of the material moving there through.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faye Francis whose telephone number is 571-272-4423. The examiner can normally be reached on M-F 6:30-3:00.

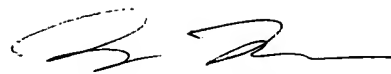
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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FF

A handwritten signature in black ink, appearing to read 'Faye Francis', with a stylized, flowing script.

Faye Francis